IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 190 of 2003
With
SPECIAL CIVIL APPLICATION No. 11078 of 2003
With
COMPANY PETITION No. 73 of 1996
With
COMPANY PETITION No. 74 of 1996
With
COMPANY PETITION No. 124 of 1996
With
COMPANY PETITION No. 23 of 1997
With
COMPANY PETITION No. 50 of 1998
With
COMPANY PETITION No. 161 of 2000
With
COMPANY APPLICATION No. 57 of 2005
In
COMPANY PETITION No. 190 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5	Whether it is to be circulated to the civil judge ?

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B.I.F.R. - Petitioner
Versus
CMD, APS STAR INDUSTRIES LTD. & 27 - Respondents

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Appearance :

1. Company Petition No. 190 of 2003

BOARD OPINION for Petitioner.
MR RD DAVE for Respondent No. 1.
None for Respondent Nos. 2-5,7-18,21 - 26, 28,
MR BHARAT JANI for Respondent No. 6.
MR SUBRAMANIAM IYER for Respondent Nos. 19-20.
MR RAJESH P MANKAD for Respondent No. 27.
MR G.M. JOSHI for Respondent No. 28.

2. Special Civil Application No. 11078 of 2003

MR AK CLERK for Petitioners.

3. Company Petition No. 73 of 1996

MR H.M. BHAGAT for Petitioner.
MR AC GANDHI for the Respondent.

4. Company Petition No. 74 of 1996

MR AR MAJMUDAR for the Petitioner.
MR K.M. PAUL for the Respondent.

5. Company Application No. 126 of 1996

MR R.S. SANJANWALA for the Applicant.
MR A.C. GANDHI for respondent No. 1.

6. Company Petition No. 23 of 1997

MR S.N. SOPARKAR, Senior Advocate for the

applicant.
MR A.C. GANDHI for the Respondent.

7. Company Petition No. 50 of 1998

MR A.P. FANIBARDA for the Petitioner.
MR K.M. PATEL for the Respondent.

8. Company Petition No. 161 of 2000

MR P.P. BANAJI for the petitioner.

9. Company Application No. 57 of 2005

MR S.H. IYER for the Applicant.
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 09/01/2006

COMMON ORAL JUDGMENT

1.Since all these Company Petitions, Company Application and Special Civil Application are in respect of the properties of the Company and in respect of the claims made by the petitioning Creditors against the Company, namely, APS Star Industries Limited, they are heard together and are being disposed of by this common judgment and order.

2.Company Petition No. 190 of 2003 is registered on the basis of the opinion forwarded by the Board for Industrial and Financial Reconstruction (BIFR) on 16.07.2003 to the Registrar of this Court under Section 20 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) stating that despite having allowed enough time and opportunity, it had not been possible to formulate any acceptable revival scheme for the Company enabling it to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the Company as a result thereof was not likely to become viable in future and that it was just, equitable and in public interest that the Company should be wound up under Section 20 (1) of the Act. The Board has further directed the Company in terms of clause (b) of Section 22A of the Act not to dispose of or alienate in any other way any of

its fixed or current assets without specific prior approval of BIFR and chargeholders, till an Official Liquidator to be appointed by the concerned High Court to take charge of these assets.

3.During the pendency of the aforesaid petition, Engineering Mazdoor Sangh through its President Shri Harshadbhai D. Thakkar has filed petition being Special Civil Application No. 11078 of 2003 praying for quashing and setting aside the order and/or direction issued by BIFR on 26.06.2003 in Case No. 28 of 1998. The petitioners have also prayed for the mandatory direction to the respondents to permit the petitioner to continue manufacturing operation of the Vadodara Unit by engaging the members of the petitioner Union. The petitioner has further prayed for the direction to the respondent No. 5 i.e. IDBI to evolve a Scheme for running Vadodara unit of the respondent

Company by protecting employment of the employees who are members of the petitioner union, in consultation with management of the respondent Company.

4. Company Petition No. 73 of 1996 is filed by The Instalment Supply Limited for winding up of the respondent Company on the ground that the respondent Company has failed to pay an amount of Rs. 7,47,160/- being the lease rentals and compensation for delayed payment of lease rentals, as per the statutory notice dated 11.10.1995 and after issuance of the said notice and till the filing of the winding up petition, a further sum of Rs. 1,65,154/- towards overdue lease rentals and Rs. 43,755/- towards interest on delayed payments.

5. Company Petition No. 74 of 1996 is filed by Transpek Industry Limited for winding up of the respondent Company on the ground that the

respondent Company has failed to pay an amount of Rs. 25 Lacs being the Inter-Corporate Deposit along with interest accrued and payable thereon.

6.Company Petition No. 124 of 1996 is filed by Shri S.C. Roongta for winding up of the respondent Company on the ground that the respondent Company has failed to pay an amount of Rs. 46,411.40 ps.

7.Company Petition No. 23 of 1997 is filed by M/s. J.C. Steel Sales for winding up of the respondent Company on the ground that the respondent Company has failed to make the payment of Rs. 42,18,778/- as per the particulars of claim filed by the petitioner along with the petition at Annexure A.

8.Company Petition No. 50 of 1998 is filed by M/s. Pennzoil India Limited for winding up of

the respondent Company on the ground that the respondent Company has failed to make payment of Rs. 8,31,590.82 ps.

9.Company Petition No. 161 of 2000 is filed by M/s. Steel Corporation for winding up of the respondent Company on the ground that the respondent Company has failed to make the payment of Rs. 64,484.14 ps. along with the interest accrued and payable thereon.

10.Company Application No. 57 of 2005 is filed by Star Textiles Employees Staff Union for constitution of sale committee for disposal of the assets of the Dombiwali unit as well as corporate office of the Company at Dhanraj Mahal at Bombay and two representatives of applicant No. 1 – Union, namely, Mr. V.R. Patil and Mr. P.B. Tare and two representatives of applicant No. 2 - Union i.e. Mr. R.B. Rumde and Mr. L.V. Gandhi may be included in the Sale

Committee as representatives of the workmen and staff of Dombiwali unit and they have also sought for the directions to disburse the amount of Rs. 7.36 Crores to the 416 workmen of Dombiwali unit of the Company.

11.Since the respondent Company was before BIFR, Company Petition Nos. 73, 74, 124 of 1996, 23 of 1997, 50 of 1998 and 161 of 2000 were kept in abeyance by virtue of the provisions contained in Section 22 of SICA. All these petitions are now taken up for hearing in view of the order passed by BIFR which is the subject matter of challenge in Company Petition No. 190 of 2003 as well as Special Civil Application No. 11078 of 2003.

12.During the pendency of Company Petition No. 190 of 2003, two more Company Applications were filed, namely, Company Application No. 18 of 2004 by Gujarat Engineering General Kamdar

Union and Company Application No. 94 of 2004 by M/s. Star Industrial and Textile Enterprise Employees Union, Nasik for impleading them as party – respondents in Company Petition No. 190 of 2003. This Court has passed an order on 08.07.2004 impleading them as party – respondents in Company Petition No. 190 of 2003.

13.So far as Company Petition No. 190 of 2003 is concerned, this Court has issued notice on 28.07.2003. Immediately thereafter, Special Civil Application No. 11078 of 2003 was filed. Thereafter, both these matters were listed together and several orders were passed from time to time.

14.Mr. R.D. Dave, learned advocate appeared on behalf of the respondent Company in both these matters. An affidavit-in-reply is filed by Shri Rohit Manharlal Mehta, one of the

Directors of the respondent Company on 28.07.2004. It is the case of the respondent Company that the order of BIFR forming opinion about winding up was illegal, improper and bad in law and the Company is not required to be wound up based upon the said opinion of BIFR. Mr. Dave has submitted that BIFR has committed serious error in giving opinion for winding up without considering and appreciating the proposal submitted by one Mr. B.K. Patel in response to the advertisement issued by IDBI as per the order of BIFR dated 14.02.2002. He has further submitted that pursuant to the order of BIFR, IDBI which was appointed as Operating Agency, issued an advertisement in 'Economic Times' – Ahmedabad edition dated 13.03.2002 inviting offer for take over, leasing, merger, change in management of the Company. Pursuant to the said advertisement of IDBI, Shri B.K. Patel has submitted comprehensive proposal for taking over the said company by effecting

change in management, supported by the resolution of the Board of Directors of the Company dated 30.08.2002. The said Mr. B.K. Patel had agreed to invest Rs. 8 Crores as suggested in the Scheme itself. The proposal was considered in the consortium meeting held on 02.09.2002 and it was supported by majority of the Banks and institutions with suggestion of some modification. The said Mr. B.K. Patel had already spent and contributed Rs. 60 Lacs towards part of wages to the workers and for restarting Baroda unit of the Company, thereby 130 employees have been given employment immediately and achieved turn over of Rs. 3 Crores in Baroda unit. He has further submitted that Dombivali workers have received Rs. 67 Lacs. This important aspect was lost sight of by BIFR while passing the impugned order forming the opinion of winding up of the Company. He has, therefore, submitted that the board opinion is not required to be accepted by

this Court.

15.Mr. Dave has further submitted that the impugned order forming final opinion of winding up dated 26.06.2003 is contrary to its earlier orders in as much as the fact that by an order dated 14.02.2002, the Board came to a definite conclusion that the Board would not like to come to the conclusion about non-viability on the basis of simple submissions. While passing the final order dated 26.06.2003, the Board accepted the simple submission of some of the financial institutions without any cogent material and evidence in support of the submissions and thereby recommended winding up of the Company. Mr. Dave has further submitted that the Board has not taken into consideration various objections and submissions made by various parties including the Company and erroneously passed the impugned order dated 26.06.2003 forming opinion for winding up of

the respondent Company. The Board has also not appreciated the fact that as per the proposal of Shri B.K. Patel, the workers of the four units were to receive Rs. 9.50 Crores in the very first year and Rs. 9.92 Crores in the second year, apart from providing employment to 130 employees at Vadodara. The said amounts were to be given as per the scheme submitted by Mr. B.K. Patel. However, none of the said aspects have been considered and discussed in the board opinion for winding up and suggested for winding up of the Company which is not in the larger interest of the shareholders, workers and also secured creditors. He has further submitted that the Board has also failed to consider the fact that the proposal of Shri B.K. Patel provides for sale of the properties comprising land, building and machineries of the units situated at three places i.e. at Dombivali, Nasik and Dharwad and also to sell surplus machineries at Vadodara.

Apart from this, it was also suggested to sale corporate office at Bombay. Sale proceeds thereof were suggested to be distributed amongst workers and secured creditors as per Section 529-A of the Act. The entire assets of the Company are insufficient to meet with larger interest of secured creditors and workers and at the same time, the Baroda unit which is a going concern can be protected if the scheme is accepted and thereby the secured creditors also will get sizable amount as per the scheme.

16.Mr. Dave has further submitted that if the Company is ordered to be wound up and assets are ordered to be sold, sale proceeds would be substantially less than what is offered in the scheme of Mr. B.K. Patel. In winding up proceedings, the sale proceeds would be absolutely insufficient to meet with liability of workers and secured creditors. Moreover,

all the workers will be deprived of getting employment which will result into loss to the State Government by way of revenue as well as to the shareholders. He has, therefore, submitted that it is not in the interest of all the workers, secured creditors or the shareholders to wind up the Company pursuant to the Board opinion.

17.Mr. Dave has further submitted that the Board has failed to consider that Mr. B.K. Patel in his scheme has not asked for any financial assistance in the form of any fresh loan. He has, therefore, submitted that this question was required to be considered as to whether Section 19 (2) of SICA has any application in the facts and circumstances of the present case. The secured creditors have made improvement in their stand from time to time and changed their stand. The Board, however, did not accept the said variance and decided to

go for alternatives in terms of Section 18 of SICA. The Board should have given separate treatment and consideration to Baroda unit as the Baroda unit is the only unit which is a going concern. However, the said possibility has not been examined by the Board and thereby committed serious error. Mr. Dave has further submitted that the respondent Company cannot have any objection for disposal of defunct and non-operative units which are closed since long. The Company is also having no objection for sale and disposal of corporate office situated at Dhanraj Mahal Office at Bombay. By sale of the said assets, sizable amount can be recovered and the substantial amount can be paid to the secured creditors and workers of the respective Units, thereby the Baroda unit can be saved which is a going concern and large number of workers can be given employment and the secured creditors, namely, Bank of India and United Bank of India can be paid dues if

the Company is allowed to continue. The workers of Baroda unit have agreed to sacrifice substantially by not enforcing their outstanding dues and agreed to co-operate the management of the Company to run Vadodara unit so as to make it profitable.

18.Based on the aforesaid submissions, Mr. Dave has submitted that this Court should not accept the opinion forwarded by BIFR for winding up of the respondent Company and dismiss this petition.

19.Mr. A.K. Clerk, learned advocate appeared on behalf of Engineering Mazdoor Sangh, a majority Union. An affidavit-in-reply is filed by Mr. Harshadbhai D. Thakkar, the President of the said Union. This union has also filed Special Civil Application No. 11078 of 2003 challenging the order passed by BIFR. Mr. A.K. Clerk, learned advocate also appeared on behalf of the

petitioner in Special Civil Application No. 11078 of 2003. It is his common submission in both these matters that except Vadodara unit, none of the other three Units were viable and in a position to continue its activities. In Vadodara unit, about 625 workers have been engaged. However, on account of sudden disruption of production activities on 13.06.1999, the workers were rendered jobless and the industrial peace was jeopardized. Ultimately, the petitioner Union intervened and negotiated with the management, as a result thereof, an amicable settlement was arrived at between the petitioner Union and the management on 19.09.2001 containing various terms and conditions by extending full co-operation. The settlement provides for restarting Vadodara unit with total cooperation and coordination between the management and the workers. The idea behind the settlement was to see that the Vadodara unit survives which may gradually give

employment to 625 employees. The resultant effect was that the Vadodara unit started its production activities from December, 2001 when on behalf of the management Shri B.K. Patel as president of the Company under legal authority on behalf of the Board of Directors intervened and invested huge funds for revival of the Vadodara unit. He has further submitted that during short span, about 125 employees have been re-employed, who have been paid wages of approximately Rs. 96 Lacs by the Company. Over and above, the Company has also paid contribution towards P.F. ESIC etc. The management has also paid Central Excise Duty of Rs. 44,80,945/- which is revenue income to the Union of India. GEB has also received energy bill of Rs. 15,10,000/- from the management. The management has also paid sizable amount to the employees who have not been given employment. He has, therefore, submitted that the Company has taken good start and has been

able to pay sizable amount of the workers towards their regular salary, bonus, arrears etc. The employees who died during that period have been paid their full gratuity. The employees who have retired during service have also been paid their full gratuity. Considering all these aspects, he has submitted that Vadodara unit is a viable and it is the only running unit where about 600 employees can be employed gradually. The Vadodara unit is also engaged in exporting its production to Turkey and Middle east countries. Therefore, there are all chances to make the Vadodara unit profitable. If the Company is unable to run other units, the Union has no objection for disposal of the other units by secured creditors or by order of this Court. However, it is not fit case where the Company is allowed to work till date, to go into liquidation, as a result the Vadodara unit which is a running concern also be closed down which may result

into unemployment to 625 employees.

20.Mr. Clerk has further submitted that the Board has totally neglected the say of the petitioner Union in as much as the fact that the workers at Vadodara unit having outstanding dues of approximately Rs. 10 Crores have been ignored and BIFR was mainly concerned with outstanding dues of financial institutions and banks which is highly unreasonable. This is the only source of livelihood for the workers and in this stringent financial condition, if the Vadodara unit is wound up by drastic action of winding up proceedings pursuant to the Board opinion, then 625 employees and their families will be stranded on street and they will be put to starvation. The dues of the financial institutions and banks only cannot have priority and precedence and cannot be the only consideration for deciding validity of the Company. BIFR ought to have appreciated that

Vadodara unit is a viable unit which is smoothly running and making sale of about Rs. 3 Crores p.a. and should have saved from winding up. IDBI, being the Operating Agency, is under an obligation to protect and safeguard the interest of Vadodara unit which is a running Unit. There is total failure on the part of the Board as well as the Operating Agency not to consider the other possibilities of revival of Baroda unit and protect it under the scheme by disposing of other assets of other Units. He has, therefore, submitted that the order passed by BIFR and opinion formed therein for winding up of the respondent Company is required to be quashed and set aside.

21. An affidavit-in-reply is filed on behalf of respondent Nos. 19 & 20 i.e. General Secretary of the Star Textile Employees Staff Union and Star Textile Engineering Employees Union. Mr. Subramaniam Iyer, learned advocate appeared for

respondent Nos. 19 & 20 and has submitted that Dombivali unit of the Company has been illegally closed since 01.03.1996. More than 400 workers have not been paid wages and other legal dues by the Company since 01.03.1996. A complaint was lodged by the respondent Nos. 19 & 20 before the Industrial Court at Thane for effecting illegal closure in contravention of the provisions of Section 25-N of the I.D. Act. The Industrial Court directed the Company to pay the workers their monthly wages after adjustment of certain amount of terminal dues. The said order was challenged by the Company before the Bombay High Court by way of Writ Petition No. 6312 of 1996 wherein motion was made for stay against order of the Industrial Court. The interim relief was refused by the Bombay High Court vide its order dated 16.01.1997. Since the order of the Industrial Court was not complied with, the respondent Nos. 19 & 20 moved a petition under the

Contempt of Court Act being Contempt Petition No. 188 of 1997. By interim order dated 23.04.1998, the Bombay High Court has issued directions to BIFR to consider interim payments to be made to the workers as would be admissible under the law. By another interim order dated 15.12.1998, the Bombay High Court has directed the Company to pay Rs. 7 Crores by selling the assets of the Company including the Dombivali plant, machinery and land and that workers shall have no objection to the closure or winding up of the Dombivali establishment and all claims of the workers would be put an end to. Mr. Iyer has further submitted that on 22.07.1999, an agreement was arrived at between the parties whereby the Company had agreed to pay Rs. 7.36 Crores to the workers towards full and final settlement.

22.Subsequent to the aforesaid development, Civil Application No. 7708 of 1999 was filed by

Industrial Development Bank of India in Contempt Petition No. 188 of 1997 pending before the Bombay High Court. In the said application, an order dated 07.03.2000 was passed by the Bombay High Court and directed the Asset Sale Committee to sell the Dombivali unit of the Company subject to sanction from BIFR and the charge of I.D.B.I. Despite the order of the Industrial Court and the Bombay High Court, the Company has not paid wages to the workers and employees. After taking into consideration all the aspects, the BIFR has come to the conclusion that the Company could not be revived and, therefore, it was ordered to be wound up. The respondent Nos. 19 & 20 supported the order passed by BIFR for winding up of the Company since the Company has not paid wages to the workers since 1996 and that it was not possible to revive the Company, more particularly, the unit of Bombay at Dombivali. It is, therefore, prayed before this Court that

the Court should pass an appropriate order directing the Company to pay wages and other dues of the workers of Dombivali unit immediately and/or deposit the same before this Court.

23.An affidavit-in-reply was filed on behalf of respondent No. 27 i.e. Gujarat Engineering and General Kamdar Union. Mr. R.P. Mankad, learned advocate appeared on behalf of respondent No. 27 and 28, namely, Gujarat Engineering & General Kamdar Union and APS Star Industrial & Textile Enterprise Employees Union. While supporting the winding up of the Company, Mr. Mankad has submitted that the present respondent – Union was approached by the employees of APS Star Industries Limited in the year 1996 to represent the causes of the employees and accordingly, the Union had organized the employees working in APS Star Industries Limited and since then, this Union

has been engaged in advancing the causes of employees. The management of the Company had, in the year February 1997, applied for lay off permission and the said lay off permission was in fact put to practice in April 1997. The Union had sponsored Reference No. 22 of 1997 against this action of lay off and in the said proceedings, the Industrial Tribunal has passed order for payment of wages. The Company has thereafter withdrawn the application seeking lay off permission. The Company after failing in its action of lay off as had, by displacing a notice at the Company's gate, terminated all the workmen and, therefore, Reference No. 114 of 1999 was sponsored. In the said Reference, an application at Exh. 7 was filed praying for stay against transfer, alienation sale of any machinery, tools, raw materials, finished products, movable and immovable property and amount in Bank accounts. The said interim relief was granted and it was operated all

throughout. Mr. Mankad has further submitted that with effect from October 2001, unit of Company at Vadodara started taking certain workmen on duty and having recruited about 73 workmen, production activities were commenced with effect from January, 2002. Since this recruitment was selectively made and senior workmen were not taken on duty giving complete go by to the provisions of ID Act, it created discontent and that gave rise to dispute in Reference No. 114 of 1999. In Reference No. 114 of 1999, the Industrial Tribunal, Vadodara has passed an award on 30.04.2004 and while allowing the said reference, the Industrial Tribunal has directed the Company to treat all the workmen who were on the Muster roll of the Company on 17.06.1999 as continuous in service and it was further directed to pay to all such workmen all benefits including salary and all other benefits treating them on continuous service.

24.Mr. Mankad has further submitted that despite the fact that BIFR and Industrial Tribunal had restrained the Company to transfer, sale, alienate or in any manner dispose of movable, immovable assets, Bank accounts, raw materials and finished goods etc. several machineries have been taken away from the Company. In support of this, Mr. Mankad has relied on the affidavits of the workmen which were filed along with the present reply of respondent No. 27. On 17.07.2004, the officials of the company had attempted to take away certain machineries from the company premises at about 9.00 p.m. through outside labourers but the attempts was resisted by certain workmen of the Company who were not in employment because of Company's action but who were resident of the Society in the vicinity of area where the Company is situated. He has also placed reliance on the affidavit of one Pratapbhai B. Chaudhary

annexed along with the affidavit-in-reply.

25.Based on the aforesaid facts, Mr. Mankad has submitted that it is amply clear that assets and machineries of the Company are being taken away and disposed of despite there being clear orders from BIFR and Industrial Tribunal and he has, therefore, submitted that it is essential and in the interest of justice that the winding up order should be passed immediately and the entire assets of the Company should be put under the charge of the Official Liquidator so that interest of all concerned can be preserved, maintained and protected.

26.The Company has denied the facts stated and averments made by the respondent Nos. 19, 20 & 27 in their affidavit-in-reply. The Company has filed further affidavit on 05.10.2004. It is stated that the respondent No. 27 has no locus standi in the present proceedings as very

few employees of less than 10% of the total strength are members of the said Union, whereas large number of members of more than 90% of the total strength are members of Engineering Mazdoor Sangh, who have filed Special Civil Application No. 11078 of 2003 in this Court to protect the interest of the workers. It is further stated that various leasing companies who have given machineries / equipments to the Company, either on lease or on higher purchase basis, approached BIFR and complained against objections raised by the workers for taking the machineries / equipments away. It is further stated that M/s. Alpic Finance Limited filed a suit No. 3479 of 1998 against the Company for recovery of their dues and equipments / machineries given on lease to the Company at Baroda Unit. Pursuant to the order of the Bombay High Court, the Court Receiver was appointed to take physical possession of the suit equipments and pursuant to the said order,

inventories of machineries were taken as per the instructions given by the Court Receiver about the suit equipments and written instructions were passed on by the Court Receiver for fixing the date for taking possession. The Company has not removed / transferred or sold any machineries and equipments but has respected the order of Bombay High Court and the Court Receiver has taken the possession of the suit equipments belonging to Alphic Finance Limited in compliance of the order of Bombay High Court. It is further stated that the employees comprising of Executives, Officers and Staff members of Vadodara Unit have left the employment of the Company during the period from November 1997 to January 1998 by tendering their resignations and accepting the terminal benefits from the Company. Service of few of them were terminated and no grievances have been made till this date. It is, therefore,

submitted that when the employees comprising of Executives / Officers and Staff members have already tendered their resignations and left the services, they have no voice in the present petition and cannot insist for winding up of the Company.

27. Considering the aforesaid pleadings and considering the submissions made before the Court on earlier occasion, this Court has passed an order on 27.10.2004 observing that the Company has already forwarded its proposal for compromise to Bank of India and United Bank of India, both of whom are secured creditors of the Company in relation to Vadodara unit. The Court has further observed that in so far as other units of respondent No. 1 Company, namely, the units located at Dombivali – Mumbai, Nasik and Dharwad Karnataka are concerned, the respondent Company would have no objection if appropriate sale committees are

constituted comprising of secured creditors and the workmen of each of the units for the purpose of disposal of the properties of respective units. The Court has further taken the note of the fact that the assets of Dombivali unit at Mumbai were agreed to be sold in pursuance of the award made by the Industrial Court and the settlement was arrived at between the workmen and the Company, whereby under direction of the Court a sale committee was constituted and some of the assets of the said unit have already been disposed off and the funds realised to the extent of about Rs. 67 Lacs have been paid over to the workmen. Therefore, request was made on behalf of the Company that the matters be stood over for the time being to await response from Bank of India so as to enable respondent No. 1 Company to present the scheme of compromise, especially, considering the fact that Vadodara unit is a running unit. The Court has also taken note of

the submissions made by Mr. Rajesh P. Mankad and Mr. Subramaniam Iyer appearing for different unions of workmen.

28.Subsequent to the aforesaid order of this Court passed on 27.10.2004, an affidavit was filed by Mr. B.K. Patel giving proposal so far as Vadodara Unit of the Company is concerned. It is stated therein that as a result of efforts put in by him, the factory was put to working condition and is also working with about 115 employees. He is also ready to incur further expenses provided the Vadodara unit is sold to him. He was negotiating with Bank of India as well as United Bank of India so as to arrive at one time settlement and to pay up their dues to discharge their liabilities as secured creditors on the assets of the unit at Vadodara belonging to the Company. As a fruitful results of the negotiations with the said two Banks, both the Banks agreed in

writing to accept his proposal for one time settlement. As a part of condition imposed by Bank of India, he has also deposited Rs. 5 Lac with Bank of India to be kept in no-lien Account in short deposit. It is further stated that he has incurred huge expenses and has paid sizable amount to the workers. He is agreeable if the entire assets of Vadodara unit are transferred to him by way of sale. He will pay dues of Bank of India as well as United Bank of India which would come to around Rs. 425 Lacs as per one time settlement. He has also agreed to pay the dues of Vadodara Municipal Corporation amounting to Rs. 50 Lacs. He has also negotiated with the workers to settle their dues amounting to Rs. 762.25 Lacs. He has requested by way of the said affidavit that in order to save an on-going company, he has made the said proposal and in view thereof, the winding up order may not be passed and the Vadodara Unit may be transferred to him. The

above proposal of Mr. B.K. Patel was objected to by some of the secured creditors as well as respondent Nos. 19, 20 & 27 represented by learned advocates Mr. R.P. Mankad and Mr. Subramaniam Iyer.

29.In the above background of the matter, the moot question which arise before the Court is whether this Court should accept the opinion forwarded by BIFR for winding up of the Company and whether Special Civil Application No. 11078 of 2003 moved by Engineering Mazdoor Sangh should be allowed by granting the prayer made therein in respect of the Vadodara unit of the Company. As far as the opinion forwarded by BIFR is concerned, it is an admitted position that neither the Company nor Engineering Mazdoor Sangh has challenged the order of BIFR before the Appellate Authority. The Company has not even filed any petition before this Court challenging the order passed by BIFR.

The Company has objected to the winding up order to be passed on the basis of the opinion forwarded by BIFR only in Company Petition No. 190 of 2003. While objecting to the winding up order, the Company has not put up any scheme. On the contrary, the Company has shown its willingness to sell the units at Dombivali, Nasik and Dharwad. Even with regard to Vadodara unit, there are serious allegations made against the majority union as well as the Company and against one Mr. B.K. Patel who has made a proposal for purchasing the said unit. Despite repeated efforts made by all concerned, no scheme has been proposed for running vadodara unit and certain half-hearted attempts were made. The Vadodara unit is sought to be run with the help of few employees leaving aside the claim of all other workers and employees. The secured creditors have also not come forward in clear terms supporting the Company.

30.In the above view of the matter, the Court is of the view that it is not in the interest of the secured creditors and workers to allow the Company to deal with all its assets as per its own sweet will. When the assets of the Company are to be sold and when there is no desire on the part of the Company to start its business activities, it is desirable to entrust the affairs of the Company for the purpose of liquidation of its assets and distribution of sale proceeds amongst the secured creditors, workers and other beneficiaries in accordance with the provisions of Companies Act, 1956. The Court does not think it just and proper to treat the Baroda unit separately. Had there been a Scheme of compromise or arrangement as envisaged under Section 391 and/or 394 of the Companies Act, 1956, the position would have been different. The Court would have considered the same keeping in mind the relevant statutory

provisions. However, in the present case, simply on the basis of a petition moved by the Union or proposal put forward by a person or a support rendered by the Company, the Court cannot accept the same ignoring the objections raised by many other persons. The Court, therefore, does not find any substance in Special Civil Application No. 11078 of 2003 and the same is accordingly dismissed.

31.While reaching to this conclusion, the Court derives support from its earlier decision rendered in the case of *Kamdar Ladat Samiti of Nanikram Shobhraj Mills Ltd. & Associated Units V/s. Nanikram Shobhraj Mills Ltd. & Ors., [2005] 46 (1) G.L.R. 166* wherein the Court has observed that a judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The Court sits in judgment only on the correctness of the decision itself. It is by now well

settled that jurisdiction under Article 226 is an original jurisdiction but that it is not an ordinary original jurisdiction but an extraordinary original jurisdiction. Article 226 is couched in the widest possible terms and in absence of clear bar to its jurisdiction, the power under the Article can be exercised when there is any act which is against any provision of law or violative of the constitutional provisions and when recourse cannot be had to the provisions of a statute for appropriate relief. The powers under the Article are discretionary and there are no limits upon that discretion. Therefore, the discretion has to be exercised subject to certain self-imposed limitations and not arbitrarily. The High Court does not sit as an appellate Court : interference with pure findings of fact and appreciation of evidence is not permissible. Re-appreciation of evidence cannot be undertaken. Even if on some

set of facts, circumstances and evidence on record, a different view may be possible that by itself is not enough to permit the High Court to intervene. A mere wrong decision does not clothe the High Court with jurisdiction, unless it is shown that the Tribunal has reached a decision without any evidence in support of same, or that it has considered evidence which is partly relevant and partly irrelevant.

32.The Court has further observed in the said decision that the legal position is that an order made by the Board and/or confirmed by the appellate Authority under the provisions of the Act does not operate as a binding order insofar as the Court taking up the Company matters is concerned. Even after receipt of the opinion from the Board and/or appellate Authority, the Company Court is entitled to look into the merits of such an order, and while appreciating

the merits, the position in law is well settled. The Court is empowered to exercise all the powers available to it under the Companies Act, 1956, including those available to the Court under Section 391 read with Section 394 of the Companies Act, 1956.

33.Since the Court is seized with Company Petition No. 190 of 2003, even after dismissal of Special Civil Application No. 11078 of 2003, the Court is duty bound to consider the issues raised in the said petition while deciding the issue as to whether the Company is required to be wound up or not. While passing the winding up order in the case of Nanikram Shobhraj Mills Ltd. in Company Petition No. 2 of 1998 on 12.08.2004, this Court has observed that there is no chance for revival of the Company and though the BIFR's opinion is not binding on this Court, the Court is in full agreement with the said opinion. The Scheme proposed

by the Kamdar Ladat Samiti is not in accordance with the statutory Provisions and even if it is to be judged on its face value, it does not generate any confidence with regard to its viability and workability. The scheme is opposed not only by the Secured Creditors but it is opposed even by the Workers. The Scheme is pending before the Court for about six years and yet no sincere efforts appear to have been made by the Kamdar Ladat Samiti for getting it sanctioned by this Court. The Samiti expects Secured Creditors to sacrifice for which they are not ready. No scheme can be framed and sanctioned and even if it is framed and sanctioned, it cannot run smoothly on the basis of sale of the assets of the Company and/or without bringing any new funds. It appears to the Court that even Samiti has lost all its interest in the Scheme and except to keep the matter pending and not to allow the

Court to pass winding up order, it has not done anything in the matter. What was stated in the above judgment is more or less true so far as the present case is concerned. First of all, there is no scheme. The proposal has not been found favour with all the workers as well as secured creditors. A handful of workers have come forward and demanded to run the Vadodara unit of the Company. The assets of the other units are sought to be sold and from that sale proceeds, the dues of the secured creditors and workers are to be satisfied. There is no proposal for running any other unit. If it is to be sold then it is to be sold through the Agency of the Official Liquidator which is under supervision of this Court. The Court, therefore, would have passed the winding up order in the present case, but for the fact that the present petition is not yet admitted and advertisement is not published in the newspaper as it is required under the

provisions of Companies Act, 1956. The Court, therefore, admits Company Petition No. 190 of 2003 and appoints the Official Liquidator attached to this Court as the Provisional Liquidator of the Company and he is directed to take charge of all properties of all the Units of the Company and is further directed to issue public advertisement in two Newspapers, one in English newspaper and other one is in vernacular language having wide circulation in the State of Gujarat, Maharashtra and Karnataka. The Official Liquidator is further directed to call for the details of all pending cases filed by or against the Company in different Courts and also the details of the properties which are in charge of the Court Receiver or other persons as per the directions and the orders passed by the Court.

34.The Official Liquidator is further directed to collect the details with regard to disposal of

the assets and distribution of the amount amongst the Secured creditors and/or workers pursuant to the order of BIFR or any other Court and shall place the said details before this Court at the time of final hearing of this petition. The final hearing of Company Petition No. 190 of 2003 is fixed on 20.02.2006. The advertisement as directed above should be published in the Newspapers on or before 20.01.2006. Publication of the advertisement in the Official Gazette is dispensed with.

35.Since Company Petition No. 190 of 2003 is admitted and order of advertisement is passed, the other Company Petitions, namely, Company Petition Nos. 73, 74, 124 of 1996, 23/97, 50/98 and 161/2000 no longer survive. Even otherwise, the proceedings of those petitions were stayed because of the pendency of the Company's reference before BIFR. Since BIFR has already forwarded its opinion for winding

up of the Company and based on the said opinion, Company Petition No. 190 of 2003 is registered and it is to be now finally heard on 20.02.2006, there is no need to keep these petitions pending. The petitioning Creditors of all these petitions are entitled to make their submissions at the time of hearing of Company Petition No. 190 of 2003 and if the Company is ordered to be wound up, these petitioning Creditors can lodge their claim before the Official Liquidator. Even otherwise, these petitioning creditors can also file their affidavits in support of the winding up of the Company. All these petitions will be treated as supporting affidavits for winding up of the Company and Court would take note of the claim made in all these petitions while deciding Company Petition No. 190 of 2003.

36.Subject to these observations and directions, all these petitions, namely, Company Petition

Nos. 73, 74, 124 of 1996, 23/97, 50/98 and 161/2000 are accordingly disposed of.

37.As far as Company Application No. 57 of 2005 is concerned, the same is premature at this stage as the Company is not yet wound up and after winding up of the Company, the Sale Committee may be formed as per the direction of this Court and at that time, the applicant shall move appropriate application before this Court. Subject to the above, this application is accordingly disposed of.

38.In the result, except Company Petition No. 190 of 2003, all other Company Petitions as well as Special Civil Application and Company Application are disposed of without any order as to costs.

[K.A. PUJ, J.]

S*avariya*